

Malta

1. Introduction

The Maltese Criminal Code¹ (hereinafter CC), first enacted in 1854, was modelled on the contemporary Italian and French Codes as far as substantive criminal law is concerned, but incorporated the English and Scottish rules for purposes of criminal procedure.² Maltese law does not have a separate Code of Criminal Procedure, as this is incorporated in the CC itself. The CC consists of two Books, of which Book First is the Penal Laws and Book Second is devoted to Criminal Procedure. Since its promulgation, there have been numerous amendments, but all in all the basic framework of the CC has remained the same. One of the major reforms was in 2002; this was aimed at bringing the CC in line with present-day needs and expectations. With this amendment, a number of new offences and also new procedural rights for the accused were introduced.

Rules regarding arrest and detention are mainly to be found in the mentioned Book Second of the CC. Other relevant regulations are, *inter alia*, the Police Act³ and the Constitution,⁴ of which the relevant provisions will be dealt with later.

In this report, pre-trial detention will be discussed thoroughly. The aim is to give an analysis of the minimum standards in pre-trial detention and the grounds for regular review in Malta. After dealing with some empirical background information in paragraph 2, the legal basis (scope and notion of pre-trial detention) will be discussed in paragraph 3. Paragraphs 4 and 5 concern the grounds for pre-trial detention and the grounds for review of pre-trial detention, respectively. The length of pre-trial detention will be treated in paragraph 6, after which other relevant aspects in relation to pre-trial detention follow (paragraph 7). At last, paragraph 8 will focus on the system of pre-trial detention regarding special groups.

2. Empirical background information

Various sources deliver statistics on the size of the prison population, pre-trial detention/remand imprisonment etc in Malta. In this paragraph, attention will be paid to, *inter alia*, data from the Council of Europe’s SPACE I, the International Centre for Prison Studies of King’s College London and the European Sourcebook of Crime and Criminal Justice. After presenting the data, the statistics will be discussed.

2.1 Data from the Council of Europe Annual Penal Statistics, SPACE I, Survey 2006⁵

Remarks: The numbers relate to 1 September 2006 (stock); they include the entire prison population and not only those who are held in penal institutions and no measures (legislative or other) directly influencing the trends in the number of prisoners have been taken in the course of the last twelve months.

¹ Chapter 9 of the Laws of Malta.

² World Factbook of Criminal Justice Systems, by Nancy Grosselfinger; University of Malta 1993, <http://www.ojp.gov/bjs/pub/ascii/wfbcjmal.txt>

³ Chapter 164 of the Laws of Malta.

⁴ Malta Independence Order 1964.

⁵ 23 January 2008, PC-CP (2007)9 rev3, by M.F. Aebe, N. Delgrande: University of Lausanne, Switzerland.

Table 1: Malta and its prisoners in general

Population 2006, annual estimates (thousands)	404.7
Total number of prisoners (including pre-trial detainees)	343 ⁶
Prison population rate per 100,000 inhabitants	84.7
Total capacity of penal institutions/prisons	444
Prison density per 100 places	77.3

Table 2: Special groups of prisoners⁷

Number of female prisoners (including pre-trial detainees)	14
Percentage of female prisoners (including pre-trial detainees)	4.1
Number of foreign prisoners (including pre-trial detainees)	136
Percentage of foreign prisoners (including pre-trial detainees)	39.7
Of which: number of foreign pre-trial detainees	72
Percentage of foreign prisoners who are in pre-trial detention	52.9

Table 3: Legal status of prison population I

Untried prisoners (no court decision yet reached)	122
Convicted prisoners, but not yet sentenced	0
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	***
Sentenced prisoners (final sentence)	221
Other cases	0
Total	343

Table 4: Legal status of prison population II

Percentage of prisoners not serving a final sentence	35.6
Rate of prisoners not serving a final sentence per 100,000 inhabitants	30.1
Percentage of untried prisoners (no court decision yet reached)	35.6
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	30.1

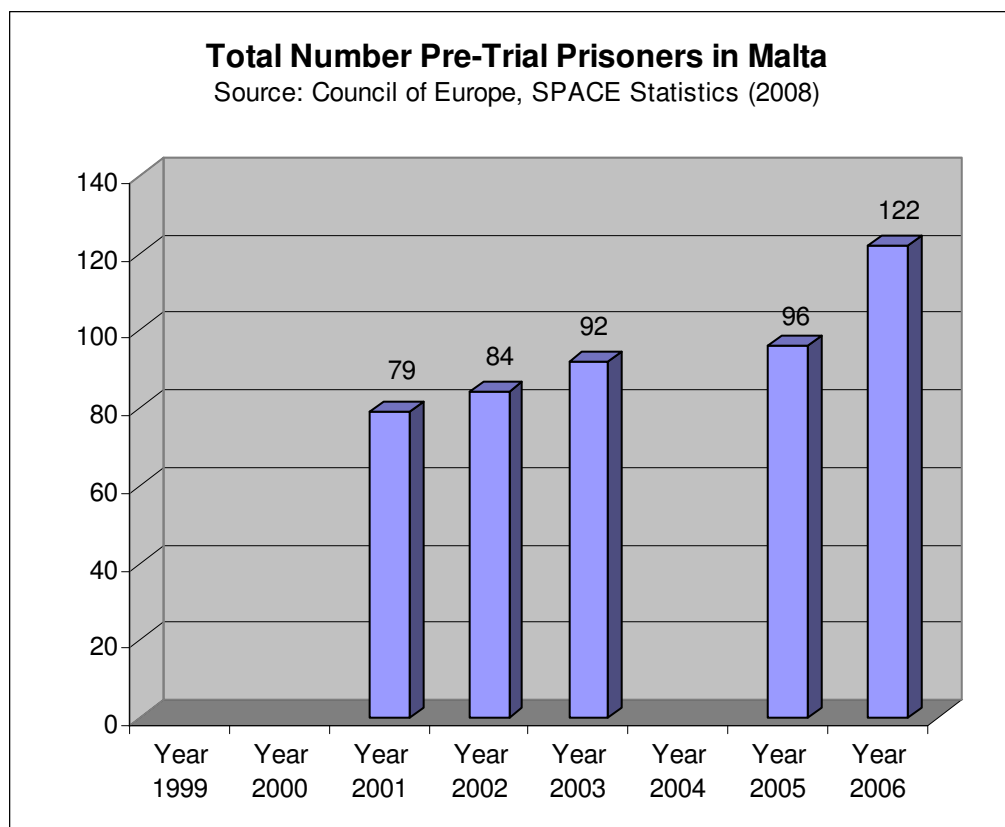
⁶ This number includes the following categories: persons held in institutions for juvenile offenders (25), persons held in institutions for drug-addicted offenders (24), and mentally ill prisoners held in psychiatric institutions or hospitals (2).

⁷ SPACE provides no data on juveniles in particular.

Table 5: Number and percentage of pre-trial prisoners in Malta

Year ⁸	Number ⁹	Percentage ¹⁰
1999		
2000		
2001	79	30,7
2002	84	42,2
2003	92	33,1
2004		
2005	96	32,2
2006	122	35,6
Average percentage		34,8
Source: Council of Europe, SPACE I Statistics		

Table 6:



8 Per 1 September of mentioned year.

9 This number includes: untried prisoners (no court decision yet reached), convicted prisoners but not yet sentenced, sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

10 Percentage of the total prison population.

Table 7:

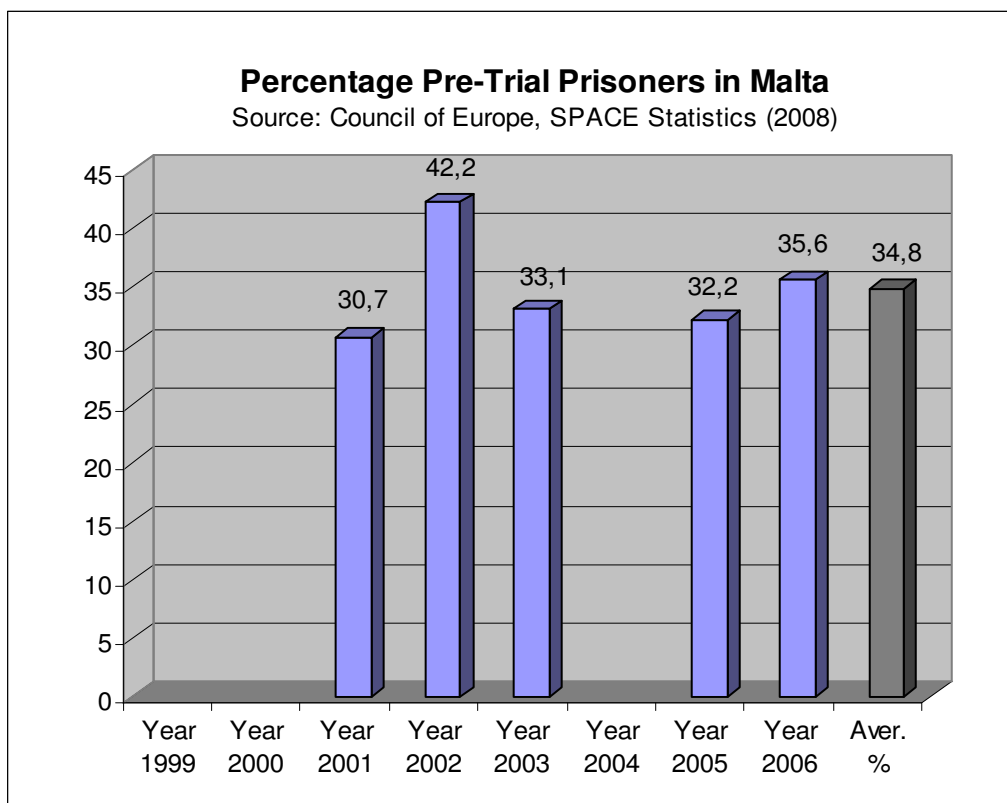


Table 8: Evolution of prison population between 2000 and 2006

	Total number of prisoners (including pre-trial detainees) on 1 September of each year	Prison population rate per 100,000 inhabitants on 1 September of each year
2000
2001	257	67.2
2002	283	71.7
2003	278	71.9
2004
2005	298	74.0
2006	343	84.7

- The change between 2005-2006 = evolution (in percentage) of prison population rates between 2005 and 2006: 14.5

Data from the International Centre for Prison Studies, King's College London

Table 9: Prison Brief 2007

Prison population total (including pre-trial detainees/remand prisoners) ¹¹	387 Average for 2007 (Ministry of Justice and Home Affairs)
Prison population rate (per 100,000 of national population)	95 Based on an estimated national population of 409,200 in mid-2007 (Eurostat)
Pre-trial detainees/remand prisoners (percentage of prison population)	31.3% (10 December 2006)
Female prisoners (percentage of prison population)	4.4% (10 December 2006)
Juveniles/minors/young prisoners (percentage of prison population)	0.9% (1 September 2006 – under 18)
Foreign prisoners (percentage of prison population)	39.7% (1 September 2006)
Official capacity of prison system	444 (20 September 2006)
Occupancy level (based on official capacity)	79.3% (20 September 2006)

Table 10: World Pre-trial/Remand Imprisonment List¹²

Total number in pre-trial/remand imprisonment	126
Date	20 September 2006
Percentage of total prison population	35.8
Estimated national population (at date shown)	407,000
Pre-trial/remand population rate (per 100,000 of national population)	31

¹¹ Prison Brief for Malta,

http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=154

¹² Roy Walmsley, January 2008,

<http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=World%20Pre-trial&search=search&type=0&month=0&year=0&lang=0&author>

The List refers to those persons who, in connection with an alleged offence or offences, are deprived of their liberty following a judicial or other legal process but have not been definitively sentenced by a court for the offence(s).

Table 11: World Female Imprisonment List¹³

Female prison population (number of women and girls in penal institutions, including pre-trial detainees/remand prisoners)	11
Date	1 September 2002
Female prisoners as a percentage of the total prison population	3.9

Data from the European Sourcebook of Crime and Criminal Justice 2006**Table 12: Prison population: percentage of pre-trial detainees in the total stock**

2000	39
2001	31
2002	30
2003	33

From the several sources of which the numbers are quite similar to each other, Table 9 gives us the most recent (2007) size of the total prison population in Malta: 387. This means that the prison population rate per 100,000 inhabitants is 95 persons, which is almost equal to the rate in neighbouring Italy. The evolution of the prison population rate from 2000 to 2006 shows an increase, with a difference between the years 2005 and 2006 of 14.5%. The prison system's total capacity is 444, of which 79.3% is occupied. This indicates that overcrowding is not a problem in Maltese prison establishments.

With regard to the pre-trial detainees, the World Remand List puts the percentage within the prison population on 20 September 2006 at 35.8, the Prison Brief mentions a percentage of 31.3 on 10 December 2006. As we can see in Table 7, the average percentage pre-trial detainees between the years 2001 and 2006 is 34.8. Table 2 shows us that a total of 136 foreigners were imprisoned on 1 September 2006. Of these foreigners, 72 were in pre-trial detention, which amounts to a high percentage of 52.9. With 4.4% of the total prison population (on 10 December 2006), the number of detained women in Malta equals the European average (also 4.4%).

With this, we will conclude this paragraph on empirical background information and continue with the legal basis of pre-trial detention in Malta. The scope and notion of this concept will be discussed in the following paragraph.

3. Legal basis: scope and notion of pre-trial detention

In relation to the scope and notion of pre-trial detention, several aspects will pass in review in this paragraph, such as the definition of pre-trial detention, the primary objective of pre-trial detention, beginning and end of pre-trial detention according to the law, the competent authorities for arrest/further detention, and the procedural rights of the accused at the time of arrest/during detention.

The classification and competence of courts of criminal justice is dealt with in the CC itself, which makes a division between Inferior and Superior Courts. Inferior Courts are the Court of Magistrates (which Court has a twofold jurisdiction), presided by a magistrate as a Court of Criminal Judicature.¹⁴ The Superior Court is the Criminal Court, presided by a judge. This court decides on the most serious cases. Cases which have to be determined by the Criminal Court are preceded by a pre-trial phase, in Maltese legal jargon known as "il-kumpilazzjoni". During this pre-trial phase, the Court of Magistrates as a Court of Criminal Inquiry has to compile all the

¹³ Roy Walmsley, August 2006, <http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=world+female+imprisonment+list&type=0&month=0&year=0&lang=0&author=&search=Search>

¹⁴ The Court of Magistrates has two branches (Sec. 367.1 CC). Besides the Court of Criminal Judicature (see Sec. 370 and further for competences etc.), there is also the Court of Criminal Inquiry.

evidence.¹⁵ The criminal inquiry is to be concluded within the term of one month (upon good cause shown, this period may be extended by the President of Malta for further periods of one month each, not exceeding three months in total). At the end of the pre-trial phase, it is to the presiding magistrate to decide whether there is sufficient evidence to commit the person charged for trial before the Criminal Court. This decision – or rather declaration – officially marks the end of the pre-trial stage.¹⁶

Offences are classified into crimes (Part II of Book First) and contraventions (Part III of Book First); crimes are more serious in nature than contraventions. The difference between the two has significant practical importance.¹⁷ The criminal action in Malta is based on the accusatorial system, and is governed by the principle of the presumption of innocence (Art. 39.5 Constitution) and by the general rule that the burden of proving the defendant's guilt rests on the prosecution, who must prove the particulars of the offence beyond reasonable doubt.¹⁸ Depending on the case, prosecution takes place through the Executive Police or the Attorney General (AG) according to the law (Sec. 4 CC). In so far as the Inferior courts are concerned, it is the Executive Police who have to initiate proceedings. The AG is precluded from initiating proceedings before the Court of Magistrates but can – if so required – assist the Executive Police (Sec. 410.3 CC). The AG only comes in as a prosecutor at a later stage of the proceedings. In fact, he only acts as a prosecutor before the Superior Criminal Courts (Sec. 430.1). In general, cases are dealt with *ex officio* by the Police, but there are exceptional cases in which the private party also has the right to institute criminal proceedings and conduct the prosecution.¹⁹

The rules regarding arrest and detention are prescribed in the Police Act, CC and the Constitution. Art. 34.1 of the Constitution lays down the generic principles against the deprivation of personal liberty. In Sec. 355V CC, it is prescribed that if lawful grounds for arrest exist, the police may request an arrest warrant from a magistrate. However, it is also possible for the police to proceed without a warrant (Sec. 355X and 355Y CC). If the magistrate refuses to issue a warrant, the police may request the issuing of a warrant from a Criminal Court judge (Sec. 355AH.4 CC). At the time of arrest, the suspect has to be informed in a language he understands that he is under arrest, even though the arrest may be obvious. If this is not done, the arrest is not lawful (Sec. 355AC CC).²⁰ When a person is arrested, with or without a warrant, the arresting police officer or his superior shall, as soon as practicable and unless the person arrested has been released within six hours from the arrest, inform a magistrate (Sec. 355AJ.1 CC). If the arrested person is not taken to court within 48 hours of his arrest, he shall be released.²¹ The court has to be presided by a magistrate. Once the arrest has been convalidated, the suspect can be remanded in custody indefinitely until the criminal proceedings filed against him are brought to an end.

During the pre-trial stage, the defendant has a series of rights. The most relevant are:

- the right to be informed of the grounds of his/her arrest/detention in a language he/she understands (Art. 34.2 Constitution and 355AC CC);
- the right to be provided with adequate time and facilities for the preparation of his/her defence (Art. 39.6 (b) Constitution);
- the right to a defence counsel. A person who cannot afford such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense. During the 48-hour detention period mentioned above, arrested persons do not have the right to legal counsel. Pre-trial detainees are granted access to counsel once charges have been filed. With the introduction of Sec. 355AT.1 (“A person arrested and held in police custody at a police station or other authorised place of detention shall, if he so requests, be allowed as soon as practicable to

¹⁵ Sec. 389 CC and further CC deal with the Court of Magistrates as a Court of Inquiry.

¹⁶ Grech, J.P., *Criminal Justice systems in Europe and North America: Malta*, Heuni 2006, Helsinki, p. 19-20, 52-55.

¹⁷ *Ibidem*, p. 26-27.

¹⁸ Criminal Justice Policies in Malta, the 9th UN Congress on the Prevention of Crime and the Treatment of Offenders (Paper), Cairo 1995.

¹⁹ In such cases, two conditions have to be met. First of all, the offence must fall within the original competence of the Court of Magistrates (see Sec. 370.1 CC). Secondly, the offence must require the complaint of the injured party for the institution of proceedings.

²⁰ See also Art. 34.2 of the Constitution, which prescribes that, at the time of his arrest/detention, the suspect has to be informed of the grounds of the arrest/detention in a language he understands.

²¹ Sec. 355AJ.3 CC, Art. 34.3 of the Constitution, and Art. 61 (a) Police Act.

- consult privately with a lawyer or legal procurator, in person or by telephone, for a period not exceeding one hour”) into the CC, an important change was made. However, six years after its introduction, this section is still not in force;
- the right to remain silent with respect to the charges brought against him/her as well as the right not to incriminate himself/herself (Sec. 392.2 CC);
 - the right to be provided with the opportunity to examine the witnesses called by the prosecution before any court (Art. 39.6 (d) Constitution);
 - the right to request that a relative or friend is informed of the arrest and of his whereabouts, unless such relative or friend is reasonably suspected of being involved in the offence being investigated (Sec. 355AC CC);
 - the right to have access to government-held evidence relevant to the case.

The objective of pre-trial detention and the rules regarding arrest/detention have been discussed above. However, the question remains on which grounds pre-trial detention can be ordered. This question will be dealt with in the following paragraph.

4. Grounds for pre-trial detention

As stated earlier, Art. 34.1 of the Constitution lays down the generic principles against the deprivation of personal liberty. It states that no person shall be deprived of his personal liberty save as may be authorized by law in the following cases:

- a) in consequence of his unfitness to plead to a criminal charge;
- b) in execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;
- c) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;
- d) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- e) for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;
- f) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- g) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- h) for the purpose of preventing the spread of an infectious or contagious disease;
- i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- j) for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

Of the cases prescribed in Art. 34.1 of the Constitution, sub (f) is relevant with respect to pre-trial detention. In terms of Sec. 574.1 CC, a person charged or accused, who is in custody, can request to be granted temporary release from custody upon bail.²² The ultimate discretion in granting or refusing bail to someone who is charged or accused of a criminal offence lies solely with the Courts of Law. Such decision is taken by the Courts upon an examination of all of the relevant facts in connection to a particular case before them. In this respect Sec. 575.1 CC specifies that whilst granting bail, the Court should be satisfied that there is no danger that the accused if released on bail-

²² Grech, J.P., *Criminal Justice systems in Europe and North America: Malta*, Heuni 2006, Helsinki, p. 68.

- will not appear when ordered by the same court; or
- will abscond or leave Malta; or
- will not observe any of the conditions which the court would consider proper to impose in its decree granting bail; or
- will interfere or attempt to interfere with witnesses or otherwise obstruct or attempt to obstruct the course of justice in relation to himself or to any other person; or
- will commit any other offence.

Some other plausible reasons of why a person could be detained during the pre-trial period and not released on bail are:

- The person charged or accused could have breached bail conditions and hence he was rearrested; or
- The person charged or accused does not fulfil the conditions imposed upon him by the Court for bail to be accorded (e.g. he does not pay the amount stipulated by Court as deposit or else no one acts as a surety for him; or
- The person charged or accused could be serving a court sentence for a previous conviction.

As a rule the Court cannot grant bail *ex officio* (Sec. 582 CC). There has to be a request to this effect by the person charged or accused. This however does not apply to those cases where the President can grant bail. The President can act *ex officio* if the circumstances so require, without there being the need for such request (Sec. 574.2 CC). Bail becomes mandatory if the cause is not heard within a reasonable time, when the indictment is not filed in time and when the valid reasons for the withholding of bail cease to exist (Sec. 575.5 CC).

5. Grounds for review of pre-trial detention

Until the introduction of Sec. 409A, no specific action existed in the CC for challenging the arrest of a person who is being interrogated. The practice was that of filing before the duty magistrate an application containing a respectful reference to Art. 137 of the CC, which provides that “any magistrate who, in a matter within his powers, fails to attend to a lawful complaint touching an unlawful detention” commits a criminal offence.²³ Sec. 409A states: “Any person who alleges he is being unlawfully detained under the authority of the Police or of any other public authority not in connection with any offence with which he is charged or accused before a court may at any time apply to the Court of Magistrates, which shall have the same powers which that court has as a court of criminal inquiry, demanding his release from custody. Any such application shall be appointed for hearing with urgency and the application together with the date of the hearing shall be served on the same day of the application on the applicant and on the Commissioner of Police or on the public authority under whose authority the applicant is allegedly being unlawfully detained. The Commissioner of Police or public authority, as the case may be, may file a reply by not later than the day of the hearing.”

In addition to Sec. 409A CC, also Art. 63 of the Police Act is relevant regarding review during police custody (which has a maximum of 48 hours). According to this article, the custody officer has to personally review, together with the investigating officer, the continued detention of the suspect to determine whether it is justified in the circumstances. The first review has to be carried out within the first twelve hours from the arrest and periodically thereafter at intervals not exceeding twelve hours. With regard to the review of a person in custody pending criminal proceedings, Sec. 412B CC prescribes that, ‘any person in custody for an offence for which he is charged or accused before the Court of Magistrates and who alleges that his continued detention is not in line with the law, may apply to the court for release at any time’.

Other provisions in the CC which give the person charged or accused other safeguards within which he will be brought to court so that his detention is reviewed are for instance:

²³ Grech, J.P., *Criminal Justice systems in Europe and North America: Malta*, Heuni 2006, Helsinki, p. 67.

- Sec. 580.2 CC, according to which the accused may make a demand for bail at any stage of the proceedings subsequent to the taking down in writing of the complaint or report and the examination referred to in Sec. 390 of the same CC;
- Sec. 574 and 574A CC, which state that the continued detention of the person charged or accused will be reviewed immediately upon his arraignment before the court (subsequent to the reading and confirming the report on oath and the examination of the accused person);
- Sec. 401.1 CC, according to which the accused shall be brought to court at least every 15 days in order that the Court may decide whether he should again be remanded in custody and this in the event that the inquiry is not concluded within the period of one month.

6. Length of pre-trial detention

Once the arrest has been convalidated, the suspect can be remanded in custody indefinitely until the criminal proceedings filed against him/her are brought to an end. Maltese law does not lay down time-frames or parameters within which proceedings are to be concluded. However, as discussed in paragraph 4, in terms of Sec. 574.1 CC, a person charged or accused who is in custody can request to be granted temporary release from custody upon bail.

7. Other relevant aspects

Several elements in relation to pre-trial detention have already been discussed in the previous paragraphs. Some of the remaining questions, such as whether the time spent in pre-trial detention is taken into account, whether there is a mechanism for compensation if the accused is not sentenced, and the practice regarding the execution of pre-trial detention, will be treated in this paragraph.

Sec. 22 of the CC deals with the issue whether the time spent in pre-trial detention has to be deducted from the final sentence: “Except in the case of a sentence of imprisonment for life or of imprisonment or detention in default of payment of a fine (*multa* or *ammenda*), any time prior to conviction and sentence during which the person sentenced is in prison for the offence or offences for which he has been so convicted and sentenced, not being time in prison in execution of a sentence, shall count as part of the term of imprisonment or detention under his sentence; but where he was previously subject to a probation order,²⁴ an order for conditional discharge or to a suspended sentence in respect of such offence or offences, any such period falling before that order was made or suspended sentence passed shall be disregarded for the purposes of this article: Provided that where any time prior to conviction as aforesaid has, by virtue of this article, been counted as part of the term of imprisonment or detention under the sentence in respect of that conviction, such time shall not be counted as part of the term of imprisonment or detention under any other sentence.”

The issue of compensation for unlawful detention is catered for only in the Constitution (Art. 34.4). This system is not aimed to compensate the accused when he is not sentenced or else not found guilty but it is aimed for those who were unlawfully detained. It is thus not possible to compensate a person who has been arrested legally and than not found guilty.

With regard to the execution of remand in custody in practice, the Corradino Correctional Facility is the main prison where sentenced prisoners and detainees remanded in custody are kept. There are also other places which are being used for the purpose of detaining persons. The Prison Administration is under the authority of the Ministry of Justice; the main regulatory act is the Prison Act,²⁵ supplemented by Prison Regulations. Remand prisoners are to be accommodated separately, but this is not always the case. Neither the law nor regulations specify the amount of space remand prisoners are entitled to. Prisoners are held in single cells.²⁶ After its 2001 visit to

²⁴ Probation is regulated by the Probation Act (Chapter 206 of the Laws of Malta).

²⁵ Chapter 446 of the Laws of Malta.

²⁶ Walmsley, R., European Committee on Crime Problems, *Analysis of Responses to Questionnaire 2 on the Conditions of Detention of remand Prisoners in Member States*, PC-DP (2004) 6.

Malta, the CPT stated in its report:²⁷ “Contrary to the situation observed in certain parts of Corradino during the previous visit (cf. paragraph 48 of the CPT/Inf (96) 25), the CPT’s delegation was pleased to find that the state of cleanliness throughout the establishment was satisfactory and that all of the cells visited were equipped with chairs and tables.”

Regarding the treatment of prisoners, the law prohibits torture and other inhuman or degrading treatment or punishment (Art. 36.1 Constitution). According to the CPT, the vast majority of persons deprived of their liberty interviewed during the 2001 visit made no allegations of ill-treatment, neither in police establishments nor in Corradino prison.²⁸ According to the law, complaints against the police may be filed with the Police Board, which has among its principal duties the examination of “any matter regarding the conduct of the police”, as well as the monitoring of internal police disciplinary proceedings held by the Police Commissioner and of the operations of the Internal Affairs Unit. Malta also has an Ombudsman, who can be requested to initiate proceedings against violations of human rights.²⁹

To conclude this paragraph, it has to be mentioned that remand prisoners can be visited by family members and usually also by friends. However, the prosecutor can impose restrictions. The allowed frequency of visits is five times a week; visits usually last from thirty minutes to one hour. Remand prisoners spend over eleven hours per day outside of their cell.³⁰

8. Special groups

8.1 Juveniles

The age of criminal responsibility is nine years (Sec. 35.1 CC) and the upper age limit for juveniles is eighteen. Minors under fourteen years of age are also exempt from criminal liability, provided, however, that they did not act with “mischievous discretion” (Sec. 35.2 CC). Mischievous discretion is defined as “the consciousness of the wrongfulness of an act and of its consequences”. Minors who have reached the age of fourteen but not yet the age of eighteen are considered fully criminally responsible; in this respect, they are at par with adults. However, in terms of Sec. 37 CC, the applicable punishment is to be diminished by one or two degrees. There is a special Juvenile Court in Malta, which is presided by a magistrate and has been granted the same powers as the Court of Magistrates as a Court of Criminal Judicature and the Court of Magistrates as a Court of Criminal Inquiry, depending on the charges preferred.

With regard to the remand in custody of juveniles, it can be stated that they have to be kept separate from adults, but can get into contact with detainees under the age of 21. According to the CPT, “the conditions in the new young offender section of Corradino prison were satisfactory. Each of its 36 single-occupancy cells measures approximately 6m² and was furnished with a bed, table, cupboard and bookshelves, as well as being equipped with a television, call system and integral sanitation. Ventilation in the cells was good, as was their access to natural light and artificial lighting.”³¹

8.2 Women

Maltese legislation does not make a difference with regard to pre-trial detention on the basis that the accused is a male or female. Hence what is applicable for a male in this field is also application to a female. Remarks of the CPT in its report of the 2001 visit to Malta concerning the women’s section of Corradino prison were:³² “The conditions of accommodation were, on the whole, adequate in each of the 23 single-occupancy cells, which measured approximately 8m² and were equipped with a bed, lavatory, washbasin and shelves. However, access to natural light, artificial lighting and ventilation in the cells left something to be desired.”

²⁷ CPT/Inf (2002) 16.

²⁸ Ibidem.

²⁹ The powers of the Ombudsman are included in the Ombudsman Act 1995. For more information on the activities of the Ombudsman in Malta, see <http://www.ombudsman.org.mt/index.asp>

³⁰ Walmsley, R., European Committee on Crime Problems, *Analysis of Responses to Questionnaire 2 on the Conditions of Detention of remand Prisoners in Member States*, PC-DP (2004) 6.

³¹ CPT/Inf (2002) 16.

³² Ibidem.

8.3 Foreigners

Art. 32.1 Constitution states that every person is entitled to the fundamental rights and freedoms of the individual, whatever his race, place of origin, political opinions, colour, creed or sex might be. The law prescribes that a person who is arrested or detained shall be informed of the reasons for it in a language he understands. If a person does not understand the language used at trial, he has the right to assistance of an interpreter, free of charge.

According to Art. 34.1 (j) Constitution, a person can be deprived of his liberty for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

Besides the grounds mentioned in the Constitution, irregular migrants can be detained for a period of no longer than eighteen months (one year in the case of asylum seekers) on the basis of an administrative decision based on the Immigration Act.³³ Over the last years, Malta has been facing a large number of irregular migrants arriving on its shores. The country has difficulties in dealing with this issue. The CPT, UNHCR as well as the Commissioner for Human Rights have reported on the bad detention conditions of irregular migrants. The problems reported included overcrowded facilities, unsanitary living conditions, and lack of access to legal resources.³⁴

8.4 Alleged terrorists

There are no special regulations for alleged terrorists. In 2005, Sub-title IV A was added to the CC, which deals with Acts of Terrorism, Funding of Terrorism and Ancillary Offences.

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³³ Chapter 217 of the Laws of Malta.

³⁴ CPT/Inf (2007) 37, CPT/Inf (2005) 15, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, Visit to Malta 20-21 October 2003, Strasbourg, 12 February 2004 and follow-up report on Malta (2003-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)14, <https://wcd.coe.int/ViewDoc.jsp?id=112905&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> and <https://wcd.coe.int/ViewDoc.jsp?id=984145&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, Malta, Country Reports on Human Rights Practices, March 11, 2008, released by the Bureau of Democracy, Human Rights, and Labor of the US Department of State, <http://www.state.gov/g/drl/rls/hrrpt/2007/100572.htm>.

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